

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
9

10 SANDRO S. PEREZ,
11 Plaintiff,
12 v.
13 A. SMITH, et al.,
14 Defendants.

Case No. 1:20-cv-00840-DAD-SAB (PC)

ORDER GRANTING MOTION FOR
RELIEF FROM REQUIREMENT UNDER
FEDERAL RULE OF CIVIL PROCEDURE
28'S REQUIREMENT TO HAVE COURT
REPORTER PHYSICALLY PRESENT

(ECF No. 38)

15
16 Plaintiff Sandro S. Perez is proceeding *pro se* and *in forma pauperis* in this civil rights
17 action pursuant to 42 U.S.C. § 1983. On June 21, 2021, the Defendants filed an *ex parte*
18 application to conduct a deposition of Plaintiff with the court reporter appearing remotely, due to
19 COVID-19 precautions. (ECF No. 38.) “The expression ‘*ex parte* motion’ is a term of art. In its
20 pure form it means a request a party makes to the court without any notice to the other side.”
21 Mission Power Eng'g Co. v. Cont'l Cas. Co., 883 F. Supp. 488, 490 (C.D. Cal. 1995). The Court
22 notes the Defendants’ filing was served on Plaintiff by U.S. mail. (ECF No. 38-3.) The Court
23 shall construe the application as a motion.

24 The Court finds good cause to grant the motion pursuant to Federal Rules of Civil
25 Procedure 28 and 30. However, while the filing indicates the “deposition had to be carefully
26 scheduled in order to accommodate the deponent’s institution and court reporting agency’s social
27 distancing requirements,” (ECF No. 38-1 at 1), the Court notes the filing does not appear to
28 contain the date of the noticed deposition. It is thus not clear how long Plaintiff would have had

1 to file any opposition or objection to the instant motion. If the Court receives any objection or
2 opposition to the motion prior to the deposition, the Court may review and entertain such, but
3 does not foresee any basis to overrule the granting of the motion herein, given the needs of the
4 court report and the facility due to COVID-19 protocols.

5 The Defendants shall further be ordered to ensure the video system or other protocols are
6 sufficiently in place so that ensure Plaintiff is able to view any exhibits during the deposition.

7 Accordingly IT IS HEREBY ORDERED that:

- 8 1. Defendants' *ex parte* motion (ECF No. 38) is GRANTED;
- 9 2. The court reporter is not required to be in the same physical location as Plaintiff
10 during the deposition; and
- 11 3. Defendant shall ensure sufficient procedures are set in place to allow Plaintiff can
12 view any exhibits presented during the deposition.

13
14 IT IS SO ORDERED.

15 Dated: July 6, 2021


UNITED STATES MAGISTRATE JUDGE